

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

FEDERAL DEPOSIT INSURANCE CORPORATION  
AS RECEIVER FOR AMTRUST BANK,

Plaintiff,

v.

PANKAJ MALIK, et al.,

Defendants.

Case No.: 09-cv-4805 (KAM)(JMA)

**DECLARATION OF SUNNY H. KIM**

I, Sunny H. Kim, pursuant to 28 U.S.C. §1746, declare as follows:

1. I am an associate with the law firm of Thompson Hine LLP, counsel for plaintiff Federal Deposit Insurance Corporation as Receiver for AmTrust Bank (“Plaintiff” or “FDIC-R”) in the above-captioned matter. I am familiar with the proceedings in this case. I make this statement based on my personal knowledge of the facts set forth herein and in support of Plaintiff’s Motion for Sanctions, including an adverse inference and costs, against Defendants Pankaj Malik (“Malik”) and Malik & Associates, P.C. (the “Malik Firm”) (collectively, the “Malik Defendants”).

2. A copy of pertinent excerpts from the transcript of the April 20, 2011 30(b)(6) Deposition of Pankaj Malik is attached as Exhibit 1.

3. Attached as Exhibit 2 is a true and correct copy of the complaint filed in this action on November 4, 2009 (Dkt. No. 1) in the above-captioned matter.

4. Attached as Exhibit 3 are true and correct copies of the Affidavits of Service of the Complaint upon the Malik Defendants on November 9 and 10, 2009. (*See, e.g.*, Dkt. Nos. 44 and 45.)

5. Attached as Exhibit 4 are true and correct copies of the notices of claims from AmTrust Bank to the Malik Firm relating to the Subject Loans dated June 16, 2009 through October 20, 2009 that were produced by Plaintiff in this action.

6. Attached as Exhibit 5 is a true and correct copy of the Malik Defendants' Initial Disclosures dated April 30, 2010.

7. Attached as Exhibit 6 is a true and correct copy of the Malik Defendants' Responses to Plaintiff's First Set of Request for Production of Documents dated October 4, 2010.

8. Attached as Exhibit 7 is a true and correct copy of the Malik Firm's Answers to Plaintiff's First Set of Interrogatories dated October 4, 2010.

9. Attached as Exhibit 8 is a true and correct copy of a letter dated November 4, 2010 from counsel for Plaintiff, Laura Watson, to counsel for the Malik Defendants, Izabell Lemkhen.

10. Attached as Exhibit 9 is a true and correct copy of a letter dated November 17, 2010 from A. Michael Furman, counsel for the Malik Defendants, to Laura Watson.

11. Attached as Exhibit 10 is a true and correct copy of a letter dated November 30, 2010 from Laura L. Watson to A. Michael Furman.

12. Attached as Exhibit 11 is a true and correct copy of a letter dated December 21, 2010 from A. Michael Furman to Laura Watson.

13. Attached as Exhibit 12 is a true and correct copy of a January 7, 2011 email from Izabell Lemkhen to counsel for Plaintiff, Laura Watson, Steven Kaufman, William Jacobs, and Jennifer A. Lesny Fleming.

14. Attached Exhibit 13 is a true and correct copy of an email exchange between counsel for Plaintiff, Laura Watson, William Jacobs and Jennifer A. Lesny Fleming, and counsel for the Malik Defendants, Izabell Lemkhen and A. Michael Furman, between February 2, 2011 and February 7, 2011.

15. Between September 17, 2010 and October 27, 2010, in response to Plaintiff's document requests, the Malik Defendants produced to Plaintiff 5,240 pages of documents numbered 000001 through 005240. Of the 5,240 pages, only 27 emails were produced.

16. On February 11, 2011, the Malik Defendants produced to Plaintiff hard copy documents, comprised of 62 emails, numbered MALIK 005437 through MALIK 005541.

17. For the 26 Subject Loans at issue in this matter, the Malik Defendants produced a total of 89 emails. Some of the emails were interoffice communications regarding the Subject Loans. The majority of the emails, 58 of the 89, however, were generic emails from AmTrust to the Malik Firm unrelated to the specifics of any of the 26 Subject Loans.

18. No emails were produced directly from Malik's Yahoo! account.

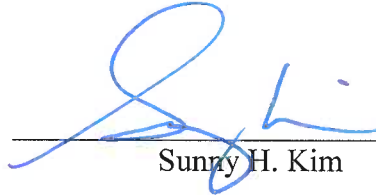
19. Attached as Exhibit 14 is a true and correct copy of a hard copy print version of the web-page from the Malik Firm website at <http://www.malikimmigrationlaw.com/Attorneys/>. According to the web-page, "[O]ur firm is led by attorney Pankaj Malik, who has an extensive background in a wide range of legal areas including . . . complex commercial litigation matters."

20. Attached as Exhibit 15 is a true and correct copy of a hard copy print version of the web-page from Furman Kornfeld & Brennan LLP website (Malik Defendants' counsel) at <http://www.fkbllp.com/about-fkb.html>. According to the web-page, "Applying our substantial trial and appellate experience and our vast experience and knowledge in our respective practice areas, [Furman Kornfeld & Brennan] defend[s] lawyers, medical and healthcare professionals . . . and other professionals, as well as general liability claims of all types."

21. Attached as Exhibit 16 is a true and correct hard copy print version of the Yahoo! Mail Help Topics at [http://help.yahoo.com/l/us/yahoo/mail/yahoomail/basics/basics-39.html;\\_ylt=Ah3N2zDU1SexKHCwyG\\_FhqyI7CN4](http://help.yahoo.com/l/us/yahoo/mail/yahoomail/basics/basics-39.html;_ylt=Ah3N2zDU1SexKHCwyG_FhqyI7CN4).

22. Attached as Exhibit 17 is a true and correct copy of a Tuesday, July 1, 2008 email from Latoya Jones to Kushu Malik at his Malik Firm address, which he then forwarded to Miranda Sookra and copied to Sabita Singh and Ed Cardoso. This email was produced by defendant NMR Advantage Abstract Ltd. and was NOT produced by the Malik Defendants.

New York, New York  
Executed on September 16, 2011

  
Sunny H. Kim